Supreme Court, U.S.
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79-1208

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

JAMES RALPH LONG,
Petitioner,

versus

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

No.

JAMES RALPH LONG,
Petitioner,

versus

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

James Ralph Long respectfully petitions for Writ of Certiorari to review the Opinion of the United States Court of Appeals for the Fifth Circuit which affirmed the verdict of the jury in the United States Court, Southern District of Mississippi, Southern Division, convicting Petitioner of First Degree Murder, Without Capital Punishment.

VERDICT AND OPINION BELOW

The verdict of the jury in the United States District Court, Southern District of Mississippi, Southern Division, Criminal Action No. S78-00029(C), UNITED STATES OF AMERICA VERSUS JAMES RALPH LONG was affirmed by the United States Court of Appeals, Fifth Circuit, in an unpublished Opinion dated December 6, 1979, reported at ____ F.2d ____. The Opinion is included in the appendices.

JURISDICTION

This Petition is filed beyond the time prescribed by Rule 22. The Clerk of this Court did not present Petitioner's Motion for Enlargement of Time in which to file this Petition due to it being received in his office one (1) day beyond the prescribed thirty (30) day period. The Motion and response from the Clerk's office are included in the appendices. However, this Petition is filed within the thirty (30) day period requested in the Motion for Enlargement of Time.

The jurisdiction of the Supreme Court is based on Title 28 USCA §1254.

QUESTIONS PRESENTED FOR REVIEW

1. Did the Government meet its burden of proof in establishing the sanity of Petitioner beyond a reasonable doubt at the time he shot decedent?

2. Did the District Court, during a critical phase of the trial, and in the presence of the jury, prejudice Petitioner and deprive him of a fair trial and effective assistance of counsel by questioning the truth and veracity of his Counsel?

3. Did the District Court err in accepting the advice of the United States Attorney that the Court had no discretion in sentencing and must impose a mandatory life sentence with no provision for parole?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Title 18, USCA, §1111(b):

> Whoever is guilty of murder in the first degree, shall suffer death unless the jury qualifies its verdict by adding thereto "without capital punishment", in which event he shall be sentenced to imprisonment for life;

Title 18, USCA §4205(a)(b):

> (a) Whenever confined and serving a definite term or terms of more than one year, a prisoner shall be eligible for release on parole after serving one-third of such term or terms or after serving ten years of a life sentence or of a sentence of over thirty years, except to the extent otherwise provided by law.

(b) Upon entering a judgment of conviction, the court having jurisdiction to impose sentence, when it is the opinion the ends of justice and best interest of the public require that the defendant be sentenced to imprisonment for a term exceeding one year, may (1) designate in the sentence of imprisonment imposed a minimum term at the expiration of which the prisoner shall become eligible for parole, which term may be less than but shall not be more than one-third of the maximum sentence imposed by the court, or (2) the court may fix the maximum sentence of imprisonment to be served in which event the court may specify that the prisoner may be released on parole at such time as the Commission may determine.

STATEMENT OF THE CASE

The jurisdiction of the United States District Court was based upon a one-count indictment charging Petitioner with having murdered decedent, a human being, at the Keesler Air Force Base in Harrison County, Mississippi, upon lands acquired for use of the United States Government, within the special maritime and territorial jurisdiction and under the exclusive jurisdiction of the United States of America, in violation of Title 18, USCA §1111. To the charge of first degree murder, Petitioner pled "not guilty by reason of insanity".

During the course of the trial, the Government presented three (3) witnesses who testified as to Petitioner's sanity:

First: The FBI Agent who investigated the case, first interviewed Petitioner two (2) hours after the shooting and stated he seemed sane at that time.

Second: An Assistant District Attorney for the State of Mississippi also interviewed Petitioner some two and one-half (2½) hours after the shooting and likewise stated that Petitioner seemed sane at that time.

Neither witness testified as to Petitioner's sanity at the time he shot decedent.

Third: The third Government witness was a psychiatrist. He testified that in his opinion, Petitioner was sane at the time he shot decedent. However, his written report, which was received into evidence, made no mention of Petitioner's sanity at the time he shot decedent. The psychiatrist based his opinion on a one (1) hour interview with Petitioner.

Significantly, two (2) other Government witnesses who (a) were eye-witnesses to the shooting and (b) had known Petitioner and decedent for some years, testified on cross-examination that in their opinion Petitioner was not sane at the time he shot decedent.

The District Court refused Petitioner's Motion for Acquittal at the conclusion of the Government's case.

On the last day of the trial, and immediately after the testimony of Petitioner's psychologist, the Court asked Counsel for Petitioner how many other witnesses he had. Counsel responded that he had two (2) short ones. The Court reminded Counsel that at the conclusion of the prior day's testimony he had told the Court he only had one (1) other witness. The Court asked Counsel if he could depend on that. The Court then asked Counsel if he was going to tell the Court the truth or not. This exchange occurred in the presence of the jury.

On March 2, 1979, Petitioner was found guilty of First Degree Murder, Without Capital Punishment. He was sentenced to the custody of the Attorney General of the United States for life.

Prior to imposition of the sentence, the Court made inquiry of the Probation and Parole Office, then present in Court, concerning the length of time necessary to complete a pre-sentence investigation. The United States Attorney advised the Court that it had no discretion in the matter of sentencing Petitioner in that the imposition of a life sentence was mandatory. The Court immediately imposed the life sentence without further hearing.

REASON FOR GRANTING THE WRIT

A miscarriage of justice occurred in the District Court and was affirmed by the Court of Appeals for the

Fifth Circuit. Without review by this Court, Petitioner may unjustly remain in prison the rest of his life.

I.

The threshold question here presented, is whether or not the Government met its burden of proof in establishing the sanity of Petitioner beyond a reasonable doubt *at the time he shot decedent*. In *United States v. McCracken*, 488 F.2d 406, 409, (5th Cir., 1974) the Fifth Circuit held that when the Defendant presents a slight quantum of evidence raising the issue of insanity, the Government is required to prove sanity beyond a reasonable doubt. Moreover, in *United States v. Hall*, 583 F.2d 1288, 1293 (5th Cir., 1978) the Fifth Circuit held that when the Defendant introduced "some evidence which need only be slight" of his insanity at the time of commission of the offense charged, he establishes a prima facie case of insanity which places the burden on the Government to prove the Defendant was sane beyond a reasonable doubt. See *United States v. Iverson*, 588 F.2d 194, 197 (5th Cir., 1979).

In concluding that the lower Court was correct in denying Petitioner's Motion for Acquittal at the conclusion of the Government's case, the Fifth Circuit relied on *McCracken*, supra., and reasoned thusly:

> "Several Government fact witnesses testified that they believed that Long was insane, other Government witnesses testified that he was sane. Conflicting evidence thus existed at the

end of the Government's presentation sufficient to justify a denial of the motion."

Petitioner respectfully submits that this is a conclusion not supported by the evidence and testimony presented by the Government.

At the conclusion of the Government's case, the question of Petitioner's sanity was in this posture:

A. Two (2) Government fact witnesses testified on cross-examination that they believed Petitioner was not sane *at the time he shot decedent.*

B. Two (2) Government witnesses testified they believed Petitioner was sane *at the time they interviewed him,* two (2) hours and two and one-half (2½) hours respectfully after the shooting. Neither testified as to Petitioner's sanity *at the time he shot decedent.*

C. The only Government witness who testified that Petitioner was sane *at the time he shot decedent,* was the Government's expert, its psychiatrist. His opinion was based on a one (1) hour interview, part of which was devoted to determining Petitioner's competency to stand trial. It is noteworthy that the expert's written report to the Court dealt only with the question of Petitioner's competency to stand trial, nothing was mentioned as to his mental capacity *at the time he committed the offense.*

In *McCracken,* supra., the Fifth Circuit further held that in determining whether or not the Government

met its burden to warrant submission of the question of insanity to the jury, both the amount and kind of evidence presented by the Government are important.

It is respectfully submitted, that with only the testimony of the Government's expert, which was at odds with other Government witnesses, the amount and kind of evidence presented clearly failed to establish Petitioner's sanity, *at the time he shot decedent,* beyond a reasonable doubt.

II.

On the afternoon preceding the day of the trial's conclusion, Petitioner presented his psychiatrist who testified he had suffered a transient psychotic episode and did not know the difference between right and wrong at the time he shot decedent. The next morning, Petitioner presented his psychologist who testified that he did not know the difference between right and wrong at the time he shot decedent. At the conclusion of this testimony, the most crucial stage of the defense, the following exchange occurred between the Court and Petitioner's Counsel:

"BY MR. MEADOWS:
We call Mrs. Garner.

BY DISTRICT JUDGE HAROLD COX:
How many more witnesses do you have, Counsel?

BY MR. MEADOWS:
Two, Your Honor, very short ones.

BY DISTRICT JUDGE HAROLD COX:

You said you were through yesterday afternoon but for one witness. *May I depend on that or not?*

BY MR. MEADOWS:

I told you what, Your Honor?

BY DISTRICT JUDGE HAROLD COX:

You said if you'd put on two witnesses yesterday afternoon and I stayed here overtime to let you put on two witnesses and you said you had a psychologist this morning and you were through. *Now are you going to tell me the truth or not?*

BY MR. MEADOWS:

Your Honor, with all deference to the Court, I object to the form of that question in the presence of this Jury. With all deference to the Court, I have done my best, Your Honor. I have two witnesses I need to put on to present my defense fully and completely to this Court. That's the only way I can answer it.

BY DISTRICT JUDGE HAROLD COX:

All right."

Thereafter, outside the presence of the jury, the Court refused Petitioner's Motion to instruct the jury to disregard the statement concerning the truth and veracity of Defendant's Counsel.

The Fifth Circuit, in dismissing this assignment of error, found:

> "No prejudicial error resulted from the trial judge's actions. The limited remarks in this case falls well below the degree of prejudice necessary to conclude that Long was denied his constitutional rights."

The Fifth Circuit compared *United States v. Abrams*, 568 F.2d 411, 423-25 (5th Cir., 1978) cert. denied, 437 U.S. 903 (1978) with the case at bar. This was error. In *Abrams*, the Fifth Circuit, in commenting on the exchange between the District Court and Counsel for Defendant, concluded that:

> "The most questionable exchange occurred outside the presence of the jury."

In the instant case, the exchange occurred in the presence of the jury at the most critical point of Petitioner's defense.

Finally, it is beyond comprehension how the Fifth Circuit could hold, in effect, that there are "degrees of prejudice" in determining whether a defendant has been deprived of his or her constitutional rights. It is respectfully submitted that the Constitution makes no provision for "degrees of prejudice" when considering a Defendant's constitutional rights before the bar of justice.

There simply must be no prejudice.

III.

After the Court had received and read the verdict of the Jury, the District Judge made inquiry concerning the length of time needed by the Probation and Parole Officer to complete pre-sentence investigation. The United States Attorney advised that in the instant case the Court had no discretion in imposing sentence in that a life sentence was mandatory. The Court, relying on the advice of the United States Attorney, immediately imposed a life sentence upon Petitioner. This was error.

In *United States v. Busic*, 592 F.2d 13 (2d Cir., 1978), the Government appealed from the District Court's sentence which designated, pursuant to 18 USCA §4205(b)(1), that the convicted Defendant would be eligible for parole after serving only eight (8) years of a life sentence rather than the ten (10) year minimum otherwise applicable under 18 USCA §4205(a).

The Government argued that the District Court had no authority to designate Defendant's sentence under the referenced Section because it was a mandatory minimum sentence prescribed by 49 USCA §1472(i)(1)(B) for aircraft piracy resulting in death and was not covered by §4205(b)(1). The Second Circuit found that the District Court possessed statutory authority to make the early parole eligibility designation. The Court went on to say that a reading of §4205

indicated that Congress meant to vest the sentencing Court with authority under §4205(b) to designate that a person subject to a life sentence be eligible for parole earlier than the ten (10) year maximum prescribed by §4205(a).

It should be noted that no objection was made by Petitioner's Counsel at the time of sentencing nor was this point raised before the Court of Appeals for the Fifth Circuit.

Unfortunately for Petitioner, his Counsel shared this lack of knowledge with the United States Attorney and the United States District Judge as to the provisions of *United States v. Busic*, supra. Clearly, this lack of knowledge which resulted in Counsel's failure to object prior to the imposition of sentence, should not be allowed to prejudice the rights of Petitioner.

The trial Court had the option to require a pre-sentence investigation so as to determine whether or not any mitigating circumstances should be considered which might persuade the Court to provide early parole eligibility for Petitioner as in *United States v. Busic*, supra.

This is not mere surmise or speculation, but a very real possibility in that the proof showed that Petitioner had retired from the United States Air Force with twenty (20) years of unblemished service and had absolutely no prior criminal record.

Should the Court refuse to consider this point here raised for the first time, it would merely compound the mistake of the District Judge, the United States Attorney and Petitioner's Counsel in denying Petitioner a valuable right, that of a possible early parole eligibility.

CONCLUSION

This case should be reviewed by this Court, and thereafter reversed to correct a manifest injustice which occurred in the Courts below. First, due to the lower Court's error in refusing to enter a judgment of acquittal at the conclusion of the Government's case; second, due to the District Court's prejudicial remarks to Petitioner's Counsel in the presence of the jury; and thirdly, due to the United States Attorney, the District Judge and Petitioner's Counsel's lack of knowledge that the Court had authority to impose a lesser sentence than was given.

Respectfully submitted at Gulfport, Mississippi, this the ____ day of February, 1980.

GRAVES, RILEY, MEADOWS
AND WALKER
Attorneys for Petitioner

JOSEPH R. MEADOWS
OF COUNSEL

CERTIFICATE OF SERVICE

I, Joseph R. Meadows, of the firm of Graves, Riley, Meadows and Walker, and a Member of the Bar of the Supreme Court of the United States, hereby certify that I have served the foregoing Petition for Writ of Certiorari on Counsel for Respondent, by depositing same in the United States Mail, postage prepaid, on the ____ day of February, 1980, addressed to Honorable Wade H. McCree, Solicitor General of the United States, U.S. Department of Justice, Washington, D.C. 20530 and to Honorable Daniel E. Lynn, Assistant United States Attorney, at his usual business address, same being P.O. Box 2095, Jackson, Mississippi 39205.

THIS the ____ day of February, 1980.

JOSEPH R. MEADOWS

APPENDIX "A"

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-5205
Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

JAMES RALPH LONG,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Mississippi

---

(DECEMBER 6, 1979)

Before AINSWORTH, FAY and RANDALL, Circuit Judges.

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* Fed. R. App. P. 34(a); 5th Cir. R. 18.

PER CURIAM:

On October 2, 1978, James Ralph Long walked into the Non-Commissioned Officers' Club on Keesler Air Base and in the presence of witnesses shot and killed Currie Fred Glenn. Charged with first degree murder under 18 U.S.C. §1111, appellant offered as his only defense insanity at the time of the offense. The appellant urges four points on appeal as grounds for reversal: (1) denial of his motion for judgment of acquittal made at the close of the government's case in chief, (2) refusal to receive into evidence a gun permit, (3) improperly allowing a lay witness to give "expert opinion" testimony, and (4) prejudicial remarks by the trial judge. Finding no merit in these contentions, we affirm the conviction.

The facts are not in dispute. Several witnesses testified that Long walked into the club in a normal fashion, went to the poker table where Glenn was playing cards, pointed his pistol and fired. Long then stooped below the poker table and again fired at the decedent. He then walked to a nearby pool table, placed his weapon on it, and waited for authorities to arrest him.

The defense was insanity. Long testified that he did not recall shooting the decedent but that he remembered walking into the club and seeing the decedent sitting at the card table with other persons he mistook for decedent's brothers; he thought they were

making obscene gestures at him. Long next remembered being in custody of authorities. Several witnesses to the incident, friends of Long who were playing cards with the decedent, stated that they thought he was insane at the time he shot decedent because he did not appear to know what he was doing and because he appeared dazed as if he were in a trance. Testimony of the arresting FBI agent indicated that although defendant was in a daze, he could determine right from wrong; this agent stated that he had observed FBI agents who had killed someone exhibit similar symptoms. Another witness who observed defendant's post-crime demeanor stated that defendant was sane and could determine right from wrong despite his dazed condition.

Three expert witnesses testified regarding Long's sanity. A psychiatrist testifying for the government indicated that he knew right from wrong at the time of the crime. A defense psychiatrist testified that defendant suffered a "transient psychotic episode" at the time of the crime and could not determine right from wrong. A defense psychologist stated that Long suffered from latent schizophrenia which was activated at the time of the crime and could not determine right from wrong.

Testimony regarding the events preceding the homicide indicates that Long and Glenn were friends for several years until Glenn left his wife and began to date other women. Long subsequently began to date dece-

dent's wife. On two occasions prior to the present homicide, decedent had assaulted Long with a weapon, on one occasion shooting him in the stomach. Decedent was tried for this incident only days prior to the present crime and found not guilty by reason of self-defense. On the day of the present crime, decedent allegedly called Long, stating that he would kill him. That night, this shooting took place.

I. Denial of Acquittal Motion

The defense asserts that the trial court erred in not granting its acquittal motion at the conclusion of the government's case and at the conclusion of the entire case because the government failed to meet its burden in proving defendant's sanity at the time of the offense.

The law regarding this argument was summarized in United States v. McCracken, 488 F.2d 406 (5th Cir. 1974). When a defendant presents a slight quantum of evidence raising the insanity issue, the government is required to prove sanity beyond a reasonable doubt. In determining whether the government presented sufficient evidence for submission of the case to the jury, the amount and kind of evidence and strength of the government's case are important factors. Assuming that sufficient evidence was presented for submission of the case to the jury, the question of sanity is a factual matter; the jury's verdict should be upheld if there is substantial evidence, viewing the case in the light

most favorable to the government. Substantial evidence is "evidence that a reasonably minded jury could accept as adequate and sufficient to support the conclusion of the defendant's guilt beyond a reasonable doubt." *Id.* at 412, quoting from United States v. Harper, 450 F.2d 1032, 1040 (5th Cir. 1971); *see also* United States v. Iverson, 588 F.2d 194, 196 (5th Cir. 1979); United States v. Kossa, 562 F.2d 959 (5th Cir.), *cert. denied*, 434 U.S. 1075 (1977).

While several government fact witnesses testified that they believed that Long was insane, other government witnesses, including a psychiatrist, testified that he was sane. Conflicting evidence thus existed at the end of the government's presentation sufficient to justify the denial of the motion. Similarly, after all the evidence was presented, sufficient evidence had been presented from which the jury could have found this defendant sane beyond a reasonable doubt. Long adduced testimony from several friends who observed the homicide and from expert witnesses indicating that he was not sane; the government produced its expert and two lay witnesses who observed him shortly after the crime indicating that he was sane. In view of the conflicting evidence, the trial judge correctly refused to grant the acquittal motion.

II. Refusal To Admit Gun Permit

Long contends that the trial court erred in refusing to admit a gun permit into evidence. The defense

sought to introduce the permit to show that the murder was not premeditated. While the government's theory was that Long specifically carried the gun to the NCO Club to murder decedent, the defense sought to show that he was carrying the gun pursuant to the permit after he had been shot by the decedent. The argument is that the permit was also probative of Long's stress (sufficient to activate his latent schizophrenia) from preceding altercations with the decedent. The trial judge sustained the government's objection to the permit's introduction, stating that he did not think that the state statute relied upon by the defense for the introduction of the permit "provides any defense for . . . carrying [the weapon] against this indictment for this federal crime on federal property".

While this ruling is correct it does not answer the question of relevancy for the purpose argued. However, since several witnesses gave testimony indicating that Long had the permit, any error was harmless. *See* United States v. Johnson, 588 F.2d 961, 963 (5th Cir. 1979), *cert. denied*, 99 S.Ct. 1801 (1979); United States v. Normile, 587 F.2d 784, 787 (5th Cir. 1979).

III. Opinion Testimony of Lay Witness

It is claimed that the trial judge erred in admitting the following exchange between the government attorney and FBI Agent O'Neill:

Q. Have you had an occasion to interview other persons or to be present when other persons had been involved in a shooting or particularly a fatal shooting?

A. Yes, sir.

Q. And—

A. I would say that the state of Mr. Long would be consistent with the other people who have been through a similar experience.

Q. That is to say that the shock is that that would be normally experienced after having gone through the ordeal of shooting somebody, is that what you're saying?

A. I think if I'd just shot someone in the line of duty I would be in the same state of shock that I observed with him.

Q. In your opinion it was not an abnormality to be in a state of shock after having shot someone, is that what you're saying?

A. I think it'd be unusual if he weren't. (1st Sup. R. 1, 139-40).

Appellant claims the above testimony amounts to expert testimony by an unqualified witness and that it is based on factual experiences different from the facts of the present case.

A review of the record indicates that this testimony occurred after the agent had described Long's condition as a state of shock. Thus the agent was merely pro-

viding the basis for his opinion that defendant was in a state of shock. Under Rule 701 of the Federal Rules of Evidence, lay witnesses may testify regarding their opinions which are rationally based on their perceptions and which are helpful to a clear understanding of his testimony. The pre-rule law regarding lay testimony required that the witness state the basis for his opinion. United States v. Minor, 459 F.2d 103, 106 (5th Cir. 1972). Under the Federal Rules of Evidence, although the basis need not be stated, the district judge has the discretion to require that it be established. 3 Weinstein's Evidence ¶ 701[02] (1978) at 701-17. *See* United States v. Thomas, 567 F.2d 299, 301 (5th Cir. 1978). We find no abuse of that discretion here.

IV. Prejudicial Remarks

Lastly, it is contended that the trial judge prejudiced Long by questioning the veracity of his attorney before the jury. The transcript indicates that the trial judge asked defense counsel how many more witnesses he planned to call. When defense counsel indicated that he had two more witnesses contrary to his previous indication that he had only one more witness, the court reminded him of his previous answer and asked him, "Now are you going to tell me the truth or not?" Defense counsel objected to the question and explained that the two witnesses were required for a complete presentation of the defense. After argument outside the jury's presence, the case proceeded with the testimony of the two defense witnesses.

No prejudicial error resulted from the trial judge's actions. The limited remark in this case falls well below the degree of prejudice necessary to conclude that Long was deprived of his constitutional rights. *Compare* United States v. Abrams, 568 F.2d 411, 423-25 (5th Cir. 1978), *cert. denied*, 437 U.S. 903 (1978) *with* United States v. Candelaria-Gonzalez, 547 F.2d 291, 297 (5th Cir. 1977).

The conviction is AFFIRMED.

APPENDIX "B"

IN THE
SUPREME COURT OF THE UNITED STATES

JAMES RALPH LONG,
Defendant-Appellant,

versus No. 79-5205

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

TO: LEWIS F. POWELL, JR., ASSOCIATE JUSTICE
THE UNITED STATES SUPREME COURT

MOTION FOR ENLARGEMENT OF TIME

Comes now Defendant-Appellant, JAMES RALPH LONG, through his Attorney of Record, Joseph R. Meadows, and files this his MOTION FOR ENLARGEMENT OF TIME in which to file his PETITION FOR WRIT OF CERTIORARI with this Court and in support thereof would show the following, to-wit:

I.

That the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT did, on or about the 6th day of December, 1979, render its Opinion affirming the Judgment of the UNITED STATES DISTRICT COURT for the SOUTHERN DISTRICT OF MISSISSIPPI wherein Defendant-Appellant was convicted of First Degree Murder under 18 U.S.C., Section 1111, and thereafter sentenced to life in prison. A true and correct copy of the Court's Opinion is attached to this Motion marked Exhibit "A" and made a part hereof as if fully copied in words and figures herein.

II.

That immediately upon receipt of the Court's ruling, Defendant-Appellant's Attorney forwarded a copy of same to him at his place of incarceration at the Federal Correctional Institution in Memphis, Tennessee requesting his advice as to whether or not he desired to file a PETITION FOR WRIT OF CERTIORARI with

this Court. Due to an unexplained delay in Defendant-Appellant receiving the correspondence he did not advise his Attorney of his desire to file the referenced Petition until Friday, December 28, 1979. That the time for filing this Petition will expire on Monday, January 6, 1980.

III.

Petitioner would respectfully request this Court grant an additional thirty (30) days time in which to file his PETITION FOR WRIT OF CERTIORARI.

IV.

Finally, Defendant-Appellant would show that this MOTION FOR ENLARGEMENT OF TIME is not filed for purposes of delay, but that the ends of justice may be served.

WHEREFORE, Defendant-Appellant files this his Motion for Enlargement of Time and moves this Court to grant thirty (30) days additional time in which to file his PETITION FOR WRIT OF CERTIORARI with this Court.

Respectfully submitted,

JAMES RALPH LONG,
Defendant-Appellant

/s/ JOSEPH R. MEADOWS
JOSEPH R. MEADOWS
Attorney for Defendant-Appellant

Joseph R. Meadows
Attorney for Defendant-Appellant
GRAVES, RILEY, MEADOWS & WALKER
P. O. Box 1649
2120 14th Street
Gulfport, Mississippi 39501
(601) 864-5221

CERTIFICATE OF SERVICE

I, JOSEPH R. MEADOWS, Attorney for Defendant-Appellant, do hereby certify that a true and correct copy of the foregoing Motion for Enlargement of Time has been mailed, through the United States Mail, postage prepaid, to Honorable Daniel E. Lynn, Assistant United States Attorney, P. O. Box 2095, Jackson, MS 39205.

THIS the 2nd day of January, 1980.

/s/ JOSEPH R. MEADOWS
JOSEPH R. MEADOWS

[Received by Clerk's Office on January 7, 1980.]

APPENDIX "C"

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D.C., 20543

January 7, 1980

Joseph R. Meadows, Esquire
Graves, Riley, Meadows & Walker
P.O. Drawer 550
2120 - 14th Street, Suite 100
Gulfport, Mississippi 39501

Re: *James Ralph Long v. United States*

Dear Mr. Meadows:

The application for extension of time to file a petition for a writ of certiorari in the above-entitled case was received on January 7, 1980 and is herewith returned as out-of-time.

The time for filing a petition for writ of certiorari in this case expired on January 5, 1980, which is thirty (30) days from the decision of the United States Court of Appeals for the Fifth Circuit. Rule 34(2) provides that all requests for an extension of time must be presented to the Clerk within the time sought to be extended. Accordingly, this application cannot be submitted to a Justice for consideration.

A petition for writ of certiorari may still be filed in this case. It will be docketed and sent to the Court with a notation as to its untimeliness.

Very truly yours,

MICHAEL RODAK, JR., Clerk

/s/ PATRICIA A. DEAN
Patricia A. Dean
Assistant Clerk

th
Enc.